

BEFORE THE

JUL 13 1993

Federal Communications Commission

WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of

MM DOCKET NO. 93-42

MOONBEAM, INC.

File No. BPH-911115MG

GARY E. WILLSON

File No. BPH-911115MO

For a Construction Permit
New FM Station on Channel 265A
in Calistoga, California

TO: The Honorable Edward Luton
Administrative Law Judge

OPPOSITION TO SECOND MOTION TO STRIKE

Gary E. Willson (Willson) files this opposition to the Second Motion to Strike filed by Moonbeam, Inc. (Moonbeam). Moonbeam seeks to strike Willson's Reply to Opposition to Second Petition to Enlarge Issues.

The only apparent explanation for Moonbeam's Second Motion to Strike is its effort to have one last bite of the apple. Moonbeam's pretext for filing its Second Motion to Strike is its assertion that Willson is improperly attempting to expand the issues sought in the second petition. Willson seeks a financial qualification issue and false financial certification issue. The requested issues were specifically set forth on Page 9 of his Petition. Those are the only issues Willson seeks in his Petition and Reply. Somehow, Moonbeam extrapolates that the six points made in summary by Willson on Page 8 of his Reply are an effort to expand the issues requested. First, and most obviously, none of the summary points are drafted in the form of requested issues. Secondly, the lead sentence for the six

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summary points clearly states that the six points summarize the basis for addition of the issues already requested.

Commission rules provide for replies to oppositions to petitions to enlarge issues. This is precisely what Willson has done. Moonbeam has not, nor can it, point to a single argument made by Willson that does not deal directly with a point made by Moonbeam in its Opposition or with an issue raised by Moonbeam. Moonbeam may not like what Willson has said in his Reply, but that is no basis for striking the Reply. Moonbeam chose, on its own, not to produce Ms. Constant's financial statement -- a document which it claimed did not exist in response to a Request for Production of Documents, and now claims does exist but refuses to produce. It is Moonbeam, and not Willson, that provided a declaration of Ms. Constant saying that funds in a retirement account are available to construct and operate Moonbeam's station, but that says nothing about assets exceeding liabilities. It is also Moonbeam that, in Ms. Constant's opposition declaration, claims funds to construct are held in a "retirement account," which raises attendant issues of tax liability and penalties. Willson's reply properly addresses these points and others. Moonbeam had the opportunity in its Opposition to fully address its financial qualifications. It either did not or could not.

WHEREFORE, it is respectfully requested that Moonbeam's
Second Motion to Strike be denied.

Respectfully submitted,

GARY E. WILLSON

GAMMON & GRANGE
8280 Greensboro Drive
Seventh Floor
McLean, VA 22102-3807
(703) 761-5000

By 
A. Wray Fitch III
His Attorney

July 13, 1993

[0068/c93awfStrike2]

CERTIFICATE OF SERVICE

I, George Culver, in the law offices of Gammon & Grange, hereby certify that I have sent, this 13th day of July 1993, by first-class, postage-prepaid, U.S. Mail, copies of the foregoing OPPOSITION TO SECOND MOTION TO STRIKE to the following:

* The Honorable Edward Luton
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 225
Washington, D.C. 20554

Robert Zauner, Esq.
Hearing Branch, Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7212
Washington, DC 20554

Lee W. Shubert, Esq.
Susan H. Rosenau, Esq.
Haley, Bader & Potts
4350 North Fairfax Drive
Suite 900
Arlington, VA 22203-1633
(Counsel for Moonbeam, Inc.)


George Culver

* Hand Delivery